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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Docket No. FCIC-11-0008

RIN 0563-AC35

Common Crop Insurance Regulations; Pecan Revenue Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Pecan Revenue Crop Insurance Provisions. The intended effect of this action is to provide policy changes, to clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. The proposed changes will be effective for the 2013 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business (insert date 60 days after publication in the Federal Register) and will be considered when the rule is to be made final.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC-11-0008, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205.

All comments received, including those received by mail, will be posted without change to <http://www.regulations.gov>, including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see <http://www.regulations.gov>. If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823-4694 or by email at rmaweb.content@rma.usda.gov.

Privacy Act: Anyone is able to search the electronic form of all comments received for any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/#!privacyNotice>.

FOR FURTHER INFORMATION CONTACT: Chief, Policy Administration Branch, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box

419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563-0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States.

The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is

exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 or 7 CFR part 400, subpart J for the informal administrative review process of good farming practices as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background:

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising § 457.167 Pecan Revenue Crop Insurance Provisions, to be effective for the 2013 and succeeding crop years. The proposed changes are as follows:

1. Section 1 - FCIC proposes to revise the definition of “average gross sales per acre” by removing specific crop years from the example. This change is being proposed because the crop years listed in the example are outdated. Removing the specific crop years does not change the meaning of the example. This proposed change will alleviate the need to change the crop years in the example each time the Pecan Revenue Crop Insurance Provisions are revised.

FCIC proposes to revise the definition of “approved average revenue per acre” by changing the maximum number of years of average gross sales used to calculate approved average revenue per acre from ten to six years. This change is being proposed based on recommendations from a FCIC contracted study that found that a shorter base period works as well or better for predicting actual yields for some perennial crops. The shorter base period will be more responsive to market trends and changes in the productive capacity of the trees.

FCIC proposes to remove the references to “lowest available dollar span” from the definition of “approved average revenue per acre” and replace it with the term “T-revenue.” The “T-revenue” will be used in place of the “lowest available dollar span” when sufficient records are not provided. FCIC will develop a “T-revenue” that will represent a value similar to the current “lowest available dollar span.” This change is being proposed to facilitate the implementation of a continuous rating methodology to be consistent with other policies. Under the current rating methodology a rate class is

assigned based on which “dollar span” the insured’s average approved revenue falls into. Removing references to “dollar spans” and developing a “T-revenue” is necessary in order to migrate to the continuous rating methodology because under the new continuous rating methodology “dollar spans” will no longer be used.

FCIC proposes to remove the definition of “enterprise unit” from the current Pecan Revenue Crop Insurance Provisions and use the definition of “enterprise unit” contained in the Common Crop Insurance Policy Basic Provisions. The Basic Provisions contain additional requirements to qualify for an “enterprise unit” that are not contained in the current definition of “enterprise unit” in the Pecan Revenue Crop Insurance Provisions. This change will make the unit structures under the Pecan Revenue Crop Insurance Provisions consistent with other crop programs administered by FCIC.

FCIC proposes to revise the definition of “market price” by:

- a. Removing subparagraph (2) of the definition that references the actual price received. With the proposed revision to section 13(d)(2), the price received will be used to value any production that is sold unless the price received is not verifiable by sales receipts or is determined to be inappropriate. Since market price will only be used to value unsold production or sold production in which the price received is inappropriate or unverifiable, it is not necessary to list the price received in the definition of market price;
- b. Revising the introductory paragraph by removing the phrase “the greater of” and redesignating subparagraph (3) as subparagraph (1) to make Agricultural Marketing Service (AMS) prices the primary source for determining market price. FCIC proposes to add language to clarify the AMS price used must be from the nearest

location and must be of similar quality, quantity and variety of in-shell pecans. FCIC proposes adding the phrase “unless otherwise provided in the Special Provisions” to the end of the first sentence of the subparagraph that references AMS prices to allow flexibility to alter this section should AMS change or discontinue their current pecan reports; and

c. Redesignating subparagraph (1) as subparagraph (2) and adding the phrase “if AMS prices are not published for the week” to the beginning of newly redesignated subparagraph (2). This proposed change will make this provision an alternative method of determining market price if for any reason AMS does not publish prices for the week. This change is being proposed because using the AMS price will provide a more reliable and consistent price to value appraised production.

FCIC proposes to remove the definition of “set out” because all other references to this term within the policy are proposed to be removed.

FCIC proposes to add the definition of “transitional revenue (T-revenue)” that will be used in place of the “lowest available dollar span.” The “T-revenue” will be an amount determined by FCIC and provided in the actuarial documents. FCIC plans to establish a “T-revenue” that is comparable to the current “lowest available dollar span.” The “T-revenue” may be adjusted as more revenue data is collected.

2. Section 2 – FCIC proposes to revise section 2 to state that enterprise units are defined in accordance with the Basic Provisions and are available only if allowed by the Special Provisions. This change is necessary to make the Pecan Revenue Crop Insurance Provisions consistent with the Common Crop Insurance Policy Basic Provisions. FCIC intends to allow enterprise units through the Special Provisions.

FCIC proposes to revise section 2 to allow basic units to be divided into optional units if optional units are located on non-contiguous land, separate records of production are provided for at least the most recent consecutive two crop years that verify trees in the optional unit meet the minimum production requirement, and optional units are selected by the acreage reporting date for the first year of the two year coverage module. Optional units by non-contiguous land are being proposed at the request of producers. The proposed requirements to qualify for optional units are similar to those that are contained in the Basic Provisions, but due to the “two-year coverage module,” the requirements have been modified to be applicable to the Pecan Revenue Crop Insurance Provisions. Premium rates will be adjusted to compensate for any additional risk associated with optional units.

3. Section 3 – FCIC proposes to revise section 3 by removing all references to the “lowest available dollar span” and replacing it with the term “T-revenue.”

FCIC proposes to revise section 3(d)(1) by removing the provision that contains a factor used to reduce your average gross sales for acres that are sequentially thinned. The provision is being proposed to be removed because it is ambiguous and discourages good management practices. Language in sections 3(d)(3) and 6(b) provides consequences for sequential thinning when the thinning is expected to reduce gross sales below the approved average revenue.

FCIC proposes to add a new section 3(d)(1) that states if you fail to provide acceptable records for optional units, those units will be combined into basic units and your amount of insurance per acre will be recalculated for the two-year coverage module. This provision provides the consequence for failure to provide acceptable records for

optional units which is consistent with other crop programs.

4. Section 4 – FCIC proposes to amend section 4(b) by removing RMA’s Web site address because this is defined in the Basic Provisions.

FCIC proposes to amend section 4(d) by adding the statement, “if available from us, you may elect to receive these documents and changes electronically.” This statement is being proposed to provide consistency with the Basic Provisions. Section 4 of the Basic Provisions provides that producers may elect to receive documents and changes electronically. However, the introductory paragraph of section 4 of the Pecan Revenue Crop Insurance Provisions contains the phrase, “in lieu of the provisions contained in section 4 of the Basic Provisions.” Therefore, in order to provide consistency with the Basic Provisions it is necessary to state that, “if available from us, you may elect to receive these documents and changes electronically.”

5. Section 6 – FCIC proposes to amend section 6 by removing the percentage associated with the reporting requirements for sequentially thinning because the threshold for sequentially thinning is proposed to be removed from section 3.

6. Section 8 – FCIC proposes to amend section 8(d) by removing the minimum age requirements and adding a minimum level of production that must be obtained to qualify for insurance unless inspected and allowed by written agreement. This provision will protect program integrity because older trees that do not meet the minimum production requirement will no longer be insurable. Furthermore, this change will allow improved varieties that may come into production sooner to be insured regardless of age as long as they meet the minimum production requirement.

FCIC proposes to add a new section 8(e) to allow certain varieties or groups of

varieties to be designated as uninsurable through the Special Provisions. This change is being proposed to address varieties that may be found to be unproductive or incompatible pollinators.

7. Section 13 – FCIC proposes to amend section 13(b) by adding a statement indicating that if the insured is unable to provide separate acceptable records for any optional units, we will combine all units for which such records were not provided. FCIC also proposes adding a statement to this section stating that for any basic unit, we will allocate commingled production or revenue to each basic unit in proportion to our liability on the harvested acreage for each unit. This is standard language contained in most policies that allow optional units. These provisions are being proposed to clarify the consequences of failure to provide separate acceptable records.

FCIC proposes to revise section 13(d)(2)(i) by changing the basis by which price is determined for sold production from market price to price received. This change is being proposed to address concerns that the indemnity is not calculated on the same basis by which the guarantee is set. The guarantee is based on the price received for sold production, but indemnities are determined using the market price. FCIC also proposes adding a parenthetical stating that if the price received is not verifiable by sales receipts or is determined to be inappropriate for the quality of pecans sold, the market price will be used. FCIC intends to provide additional guidance in the 2013 Pecan Revenue Loss Adjustment Standards Handbook as to when a price should be considered inappropriate. The guidance will create a minimum threshold that the price received must meet and will be based on a percentage of the AMS price.

FCIC proposes to revise the example at the end of section 13 by replacing dates with

generic numbers for the crop year. FCIC also proposes to revise the example by changing the historical average pounds per acre and average gross sales per acre to reflect an alternate bearing pattern. FCIC further proposes to revise the example by adding insured causes of loss to the explanation of indemnity calculation to illustrate that claims are only paid if losses are the result of an insured cause. FCIC also proposes to change the example to illustrate that the price received will be used to value sold production.

List of Subjects in 7 CFR Part 457

Crop insurance, Pecan revenue, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2013 and succeeding crop years as follows:

PART 457 - COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR Part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

2. Amend § 457.167 as follows:

- a. Amend the introductory text by removing “2005” and adding “2013” in its place;
- b. Add definition in section 1 for “transitional revenue (T-revenue)”;
- c. Revise the definitions in section 1 of “average gross sales per acre,” “approved average revenue per acre,” and “market price”;
- d. Amend section 1 by removing the definitions of “enterprise unit” and “set out”;
- e. Revise section 2(a)(1);
- f. Amend section 2(a)(2) by removing the period at the end of the sentence and

adding the term “; or” in its place;

- g. Add a new section 2(a)(3);
- h. Amend the introductory text of section 3 by adding a comma following the phrase “In lieu of section 3 of the Basic Provisions”;
- i. Revise section 3(d)(1);
- j. Amend section 3(d)(2) by removing the phrase “lowest available dollar span amount provided in the actuarial documents” and adding the term “T-revenue” in its place;
- k. Amend section 3(f)(1) by removing the phrase “lowest available dollar span provided in the actuarial table” and adding the term “T-revenue” in its place;
- l. Amend section 3(h) by adding a hyphen between the words “high” and “risk” in all four instances they appear;
- m. Revise section 4(b);
- n. Amend section 4(d) by adding the sentence, “If available from us, you may elect to receive these documents and changes electronically.” following the sentence, “If changes are made that will be effective for a subsequent two-year coverage module, such copies will be provided not later than 30 days prior to the cancellation date.”;
- o. Revise sections 6(a)(1) and 6(b);
- p. Revise section 8(d);
- q. Amend section 8 by redesignating paragraphs (e) and (f) as (f) and (g) respectively, and adding a new paragraph (e);
- r. Revise section 13(b);
- s. Revise section 13(d)(2)(i);

- t. Revise the example at the end of section 13; and
- u. Amend section 16 by removing the space between “Not” and “withstanding.”

The revised and added text reads as follows:

§ 457.167 Pecan revenue crop insurance provisions.

The pecan revenue crop insurance provisions for the 2013 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Average gross sales per acre. Your gross sales of pecans for a crop year divided by your net acres of pecans grown during that crop year. For example, if for the crop year, your gross sales were \$100,000 and your net acres of pecans were 100, then your average gross sales per acre for the crop year would be \$1,000.

Approved average revenue per acre. The total of your average gross sales per acre based on at least the most recent consecutive four years of sales records building to six years and dividing that result by the number of years of average gross sales per acre. If you provide more than four years of sales records, they must be the most recent consecutive six years of sales records. If you do not provide at least four years of gross sales records, your approved average revenue will be:

(1) The average of the two most recent consecutive years of your gross sales per acre and two years of the T-revenue; or

(2) If you do not provide any gross sales records, the T-revenue.

* * * * *

Market price. The market price is:

(1) The average of the AMS prices for the nearest location for similar quality, quantity, and variety of in-shell pecans published during the week you sell any of your pecans if the price received is determined to be inappropriate, you harvest your pecans if they are not sold, or your pecans are appraised if you are not harvesting them, unless otherwise provided in the Special Provisions. For example, if you harvest production on November 14 but do not sell the production, the average of the AMS prices for the week containing November 14 will be used to determine the market price for the production harvested on November 14; or

(2) If AMS prices are not published for the week, the average price per pound for in-shell pecans of the same variety or varieties insured offered by buyers on the day you sell any of your pecans if the price received is determined to be inappropriate, you harvest any of your pecans if they are not sold, or your pecans are appraised if you are not harvesting them, in the area in which you normally market the pecans (If buyers are not available in your immediate area, we will use the average in-shell price per pound offered by buyers nearest to your area).

* * * * *

Transitional revenue (T-revenue). A value determined by FCIC and published in the actuarial documents.

* * * * *

2. Unit Division.

(a) * * *

(1) An enterprise unit as defined in section 1 of the Basic Provisions, if allowed by

the Special Provisions;

(2) * * *

(3) In lieu of the requirements contained in section 34(b) of the Basic Provisions, basic units may be divided into optional units if, for each optional unit, the following criteria are met:

(i) Each optional unit you select must be located on non-contiguous land;

(ii) Separate records of production are provided for at least the most recent consecutive two crop years. The records will be used to verify that trees from each unit meet the minimum production requirement contained in section 8(d) and to establish the approved average revenue per acre for the optional units selected; and

(iii) Optional units are selected and identified on the acreage report by the acreage reporting date of the first year of the two-year coverage module (Units will be determined when the acreage is reported, but may be adjusted or combined to reflect the actual unit structure when adjusting a loss. No further unit division may be made after the acreage reporting date for any reason).

* * * * *

3. Insurance Guarantees and Coverage Levels for Determining Indemnities.

* * * * *

(d) * * *

(1) You fail to provide acceptable records required for optional units, which will result in optional units being combined into basic units at the time of discovery and your amount of insurance per acre will be recalculated for the two-year coverage module.

* * * * *

4. Contract Changes.

* * * * *

(b) Any changes in policy provisions, amounts of insurance, premium rates, and program dates (except as allowed herein or as specified in section 3) can be viewed on RMA's Web site not later than the contract change date contained in these Crop Provisions. We may revise this information after the contract change date to correct clerical errors.

* * * * *

6. Report of Acreage.

(a) * * *

(1) Any damage to trees, removal of trees, change in practices, sequential thinning or any other action that may reduce the gross sales below the approved average revenue upon which the amount of insurance per acre is based and the number of affected acres;

* * * * *

(b) We will reduce the amount of your insurable acreage based on our estimate of the removal of a contiguous block of trees or damage to trees of the insured crop. We will reduce your amount of insurance per acre based on our estimate of the expected reduction in gross sales from a change in practice or sequential thinning.

* * * * *

8. Insured Crop.

* * * * *

(d) That are grown on trees that have produced at least 600 pounds of pecans in-shell per acre (or an amount provided in the Special Provisions) in at least one of the previous

four crop years, unless we inspect and allow insurance by written agreement. This amount of production must be achieved subsequent to any top work that occurs within a unit;

(e) That are grown on varieties or a grouping of varieties within a unit that are not designated as uninsurable in the Special Provisions;

* * * * *

13. Settlement of Claim.

* * * * *

(b) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable records for any:

(1) Optional units, we will combine all optional units for which such records were not provided; or

(2) Basic unit, we will allocate commingled production or revenue to each basic unit in proportion to our liability on the harvested acreage for each unit.

* * * * *

(d) * * *

(2) * * *

(i) The dollar amount obtained by multiplying the number of pounds of pecans sold by the price received for each day the pecans were sold (if the price received is not verifiable by sales receipts or is determined to be inappropriate by us for the quality of pecans sold the market price will be used);

* * * * *

Pecan Revenue Example

		AVERAGE	
		AVERAGE	GROSS
		POUNDS	SALES
<u>YEAR</u>	<u>ACRES</u>	<u>PER ACRE</u>	<u>PER ACRE</u>
4	100	750	\$1,050
3	100	625	\$ 625
2	100	1250	\$ 750
1	100	200	\$ 250
Total Average Gross Sales Per Acre =			\$2,675

The approved average revenue equals the total average gross sales per acre divided by the number of years ($\$2,675 \div 4 = \669).

The amount of insurance per acre equals the approved average revenue multiplied by the coverage level percent ($\$669 \times .65 = \435).

Assume pecan trees in the unit experienced damage to blooms due to a late freeze causing low production. You produced, harvested, and sold 300 pounds per acre of pecans from 70 acres and received an actual price of \$0.75 per pound. On the other 30 acres, the pecans suffered damage due to drought. You elected not to harvest the other 30 acres of pecans. The 30 acres were appraised at 100 pounds per acre and on the day of the appraisal the average AMS price was \$0.65. The total dollar value of production to count is $(300 \text{ pounds of pecans} \times \$0.75 \times 70 \text{ net acres}) + (100 \text{ pounds} \times \$0.65 \times 30 \text{ net acres}) = \$15,750 + \$1,950 = \$17,700$.

The indemnity would be:

The amount of insurance per acre multiplied by the net acres minus the dollar value of the total production to count equals the dollar amount of indemnity ($\$435 \times 100 = \$43,500.00 - \$17,700.00 = \$25,800$).

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Signed in Washington, D.C., on November 4, 2011_.

William J. Murphy
Manager
Federal Crop Insurance Corporation

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